

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDUARDO CHAVEZ and LYND
DREISBACH, individually and on behalf
of a class of others similarly situated,

Plaintiffs,

v.

WIS HOLDING CORP and
WASHINGTON INVENTORY
SERVICE, dba WIS INTERNATIONAL,

Defendants.

Civil No. 07cv1932 L(NLS)

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF
RULE 23 SETTLEMENT; FOR
CERTIFICATION OF CLASS, AND
FOR PERMISSION TO
DISSEMINATE AMENDED NOTICE
TO CLASS.**

The above-entitled matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Rule 23 Settlement, for Certification of Class, and for Permission to Disseminate Notice to Class (Doc. No. 152). For the reasons set forth in the motion and memorandum, and upon the good cause shown, it is hereby **ORDERED** that:

1. Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class, and for Permission to Disseminate Class Notice is **GRANTED**, and the terms of the Settlement Agreement and Release ("Settlement Agreement") attached as Exhibit A to the motion (Doc. No. 152), as clarified by the Parties' Joint Stipulation Regarding Settlement (Doc. No. 171), are preliminarily approved.

2. Solely for purposes of settlement, a California Class is hereby certified pursuant to

1 Rule 23(b)(3) of the Federal Rules of Civil Procedure, defined as follows:

2 Current and former Inventory Associated employed by Defendants in the State of
3 California from October 7, 2003 to November 13, 2008.

4 Specifically excluded from the California Class are: (a) all federal court judges who have
5 presided over this case and their spouses and anyone within three degrees of consanguinity from
6 those judges and their spouses, (b) all persons who elect to exclude themselves from the
7 Settlement Class; and, (c) any person who opted into this case who claims they were not
8 properly paid overtime under the FLSA and who did not work in the State of California.

9 3. The Court provisionally, and only for the purposes of this settlement, finds that:

10 (a) the Class Members consist of 16,300 individuals employed by Defendant
11 throughout the State of California, and the requirement of numerosity is satisfied;

12 (b) the litigation and proposed settlement raise questions of law and fact
13 common to the California Class, and these common questions predominate over any questions
14 affecting only individual Class Members;

15 (c) the claims of Eduardo Chavez and Tomas Soliz, Inventory Associates
16 employed by Defendants (the "Class Representatives") are typical of the claims of the Class;

17 (d) in assisting with the litigation and negotiating and entering into the
18 proposed settlement, the Class Representative and their counsel have fairly and adequately
19 protected the interests of the Class, and will adequately represent the Class in connection with
20 the proposed settlement; and

21 (e) a class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy.

23 4. Pursuant to Rule 23(g), the Court appoints the Class Representatives' counsel of
24 record Stueve Siegel Hanson LLP and Lear Werts LLP to act on behalf of the Class in
25 connection with the proposed settlement.

26 5. If the proposed settlement is not finally approved by the Court or the settlement is
27 terminated or fails to become effective in accordance with the terms of the Settlement
28 Agreement, this conditional class certification shall be vacated without further order of the Court

1 and without prejudice to the right of any party to seek or oppose class certification thereafter.
2 Otherwise, upon the Effective Date of the Settlement, this class certification shall become
3 unconditional.

4 6. A Final Fairness Hearing (the "Fairness Hearing") shall be held before this Court
5 on **Monday, April 26, 2010**, at **10:30 a.m.** at the United States District Court for the Southern
6 District of California, 940 Front Street, Courtroom 14, to determine whether the proposed
7 settlement is fair, reasonable, and adequate to the Class and should be approved by the Court;
8 whether a Judgment should be entered herein; and to determine whether the fees and expenses
9 requested by Class Counsel and the Class Representatives' requested incentive awards should be
10 approved. The Court may adjourn the Settlement Hearing without further notice to Class
11 Members.

12 7. The parties have agreed that the Class be given notice of the proposed settlement
13 by dissemination of a Class Notice, substantially in the form of Exhibit B to the Parties' Joint
14 Stipulation Regarding Settlement. Pursuant to Rule 23(c)(2)(B), the Court approves the form
15 and content of the Notice and finds that the Notice as proposed by the parties meets the
16 requirements of Rule 23 and due process, is the best notice practicable under the circumstances,
17 and shall constitute due and sufficient notice to the Class. The Court directs the Settlement
18 Administrator to disseminate the Class Notice in accordance with the terms of the Settlement
19 Agreement.

20 8. All persons who fall within the Class definition and who do not timely and validly
21 exclude themselves from the Class shall be bound by all determinations and judgments in the
22 litigation concerning the settlement. Class Members who wish to fully participate in this
23 Settlement must return the Claims Form in accordance with the instructions set forth in the
24 Notice, including mailing or delivering the Claims Form such that it is postmarked on or before
25 60 days of the date the Notice is mailed.

26 9. Persons who wish to exclude themselves from the Class shall request exclusion
27 using the Request to be Excluded Form within the time and in the manner set forth in the Notice,
28 including mailing or delivering the Request to be Excluded Form, such that it is received on or

1 before 45 days from the date the Notice is mailed, to the Settlement Administrator at the
2 addresses set forth in the Notice. Unless the Court orders otherwise, no request for exclusion
3 shall be valid unless it is made within the time and in the manner set forth in the Notice.

4 10. Any Class Member may enter an appearance in the litigation, at the Class
5 Member's own expense, individually or through counsel of the Class Member's choice. Any
6 Class Member who does not enter an appearance will be represented by Class Counsel. Pending
7 final determination of whether the settlement should be approved, neither the Class
8 Representatives nor any Class Member, either directly, representatively, or in any other capacity,
9 shall commence or prosecute against any of the Released Persons, any action or proceeding in
10 any court or tribunal asserting any of the Released Claims.

11 11. Any Member of the Class may appear and show cause why the proposed
12 settlement should or should not be approved as fair, reasonable, and adequate; or why a
13 judgment should or should not be entered thereon; or why the requested attorneys' fees and
14 expenses should or should not be awarded to Class Counsel; provided, however, that no Class
15 Member or any other person shall be heard on or entitled to contest the Court's decision on any
16 of the foregoing matters unless that person – no later than 45 days from the date the Notice is
17 mailed – has (a) filed written objections and any supporting papers and briefs with the Clerk of
18 the United States District Court for the Southern District of California; and (b) mailed or
19 delivered copies of such objections, papers, and briefs to the parties' counsel.

20 12. Unless otherwise ordered by the Court, any Class Member who does not make his,
21 her, or its objection in the manner provided in the Notice shall be deemed to have waived such
22 objection and shall forever be foreclosed from making any objection to the fairness,
23 reasonableness, or adequacy of the proposed settlement or to any award of attorneys' fees and
24 expenses to Plaintiffs' Counsel.

25 13. The Settlement Fund shall be deemed and considered to be in custodia legis of the
26 Court, and shall remain subject to the jurisdiction of the Court, until such time as such
27 Settlement Fund shall be distributed pursuant to the Settlement Agreement or further order of the
28 Court.

1 14. The application by Class Counsel for approval of attorneys' fees and
2 reimbursement of expenses, and the application for Class Representatives' service awards, shall
3 be filed and served no later than April 5, 2010, *i.e.*, 21 days prior to the Fairness Hearing. The
4 parties may file final papers in support of the settlement and may respond to any objection to the
5 settlement or the application for attorneys' fees and reimbursement of expenses, provided that
6 such response is filed and served no later than April 19, 2010, *i.e.*, 7 days prior to the Fairness
7 Hearing.

8 15. The application for attorneys' fees or reimbursement of expenses, and the
9 application for Class Representatives' service awards, will be considered separately from the
10 fairness, reasonableness, and adequacy of the settlement.

11 16. At the Settlement Hearing, the Court shall determine whether to grant the
12 application for attorneys' fees or reimbursement of expenses and the application for Class
13 Representatives' service awards.

14 17. The costs of administering the settlement and providing notice shall be borne and
15 paid as set forth in the Settlement Agreement.

16 18. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of
17 the negotiations or proceedings in connection therewith, shall be construed as an admission or
18 concession by Defendants of the truth of any of the allegations in the litigation, or of any
19 liability, fault, or wrongdoing of any kind, all of which Defendants expressly deny.

20 19. The Court reserves the right to adjourn the date of the Settlement Hearing without
21 further notice to the Class Members, and retains jurisdiction to consider all further applications
22 arising out of or in connection with the proposed settlement. The Court may approve the
23 settlement, with such modifications as may be agreed to by the parties, if appropriate, without
24 further notice to the Class.

25 ///

26 ///


27 ///

28 ///

1 20. If the settlement is not approved or consummated for any reason whatsoever, the
2 settlement and all proceedings had in connection therewith shall be without prejudice to the
3 rights of the parties.

4 **IT IS SO ORDERED.**

5 DATED: January 4, 2010

6 
7 M. James Lorenz
United States District Court Judge

8 COPY TO:

9 HON. NITA L. STORMES
10 UNITED STATES MAGISTRATE JUDGE

11 ALL PARTIES/COUNSEL
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28